IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL UNDER SECTION 109 No 14 of 1993
WITH
CIVIL APPLICATION No. 150 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LA PHARMACEUTICALS
Versus
ASTRA IDL. LTD.

Appearance:
MR RR SHAH for Petitioner
MR YJ TRIVEDI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/02/2001

ORAL JUDGEMENT

1. In this appeal, the appellant has challenged the judgment and order dated 7.10.1992 passed by the Assistant Registrar of Trade Marks, the respondent no.2

whereby the said respondent allowed the Opposition No. AMD-284 and refused registration of Application No.458833.

2. During the course of hearing, Mr. Shah, learned Counsel appearing for the appellant filed an application being Civil Application No. 150 of 2000 with a prayer to allow the production of documents annexed to the application from pages 7 to 46. Mr. Shah submits that these documents are important and relevant documents for resolving the controversy involved in the present proceedings. It is further the submission of Mr. Shah that the said documents have been referred to and relied upon by the appellant while presenting the case before the Assistant Registrar and, therefore, in the interest of justice, the same may be taken on record.

3. True, while exercising appellate powers,I could have considered production of evidence even at the appellate stage. However,it would be in the fitness of things that the Assistant Registrar may examine production of evidence under Rule 56 of the Trade and Merchandise Marks Act, 1958.

4. In view of this, the matter is remanded back to the Assistant Registrar, Trade Marks, with a direction to reconsider the matter and to take a fresh decision without in any way being influenced by the observations/ findings recorded by him, after considering the documents produced along with the Civil Application and the reply that may be filed by the other side. The appellant will file an appropriate application along with all the documents produced with the Civil Application before the Assistant Registrar within two weeks from today. On receipt of the same, the Assistant Registrar may grant such time to the other side to file reply, as may be prescribed under the rules and may dispose of the application as early as possible and preferably within three months from the date of receipt of reply.

5. In view of these directions, it is not necessary to decide this appeal on merits and, therefore, the appeal as well as Civil Application are accordingly disposed of with no order as to costs.

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